

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF VETERANS AFFAIRS

David J. Nowak,

Petitioner,

v.

Metropolitan Airport Commission,

Respondent.

**RECOMMENDATION ON MOTION
FOR DAMAGES**

The above-entitled matter is before Administrative Law Judge George A. Beck on Petitioner's motion for nominal damages. No appearances were made. The record closed August 3, 1998, with the filing of Respondent's reply letter.

Donald W. Selzer, Jr., Attorney at Law, Littler Mendelson, P.C., Multifoods Tower, 33 South 6th Street, Suite 3970, Minneapolis, MN 55402-3720, represented the Metropolitan Airport Commission (Respondent). David J. Nowak (Petitioner), 8060 S. Roberts Road, Apt. 1B, Bridgeview, Illinois, 60455, represented himself.

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Veterans Affairs will make the final decision after a review of the record and may adopt, reject or modify the Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner. The parties should contact the Department of Veterans Affairs to ascertain the procedure for filing exceptions and presenting argument.

STATEMENT OF ISSUE

Whether, in recognition of Respondent's failure to provide Petitioner with a statement of reasons as required by Minn. Stat. § 43A.11, subd. 9, there is authority to award Petitioner his claimed expenses as nominal damages.

Based upon the correspondence filed by the parties, all of the filings in this case, and for reasons set out in the Memorandum which follows:

IT IS HEREBY RECOMMENDED:

That the Commissioner issue an Order requiring the Respondent to pay Petitioner nominal damages in the amount of \$200.

Dated this 21st day of August, 1998.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

This matter was brought pursuant to the enforcement provision of the Veterans' Preference Act, Minn. Stat. § 197.481. Petitioner, a veteran within the meaning of the Act, was an unsuccessful applicant for the ANOMS Technician position at the Metropolitan Airport Commission. Petitioner interviewed for the position on December 19, 1997 and on December 29, 1997. Approximately two weeks after his second interview, Petitioner received a letter from Respondent notifying him that he was not selected for the position and that the person who was hired "best matched the requirements for the position." After receiving the letter, Petitioner contacted Respondent on several occasions and requested that the person responsible for making the hiring decision provide him with a statement of the reasons for his rejection as required by Minn. Stat. § 43A.11, subd. 9 (1998). Respondent did not respond to Petitioner's requests. On March 28, 1998, Petitioner initiated this proceeding by filing a petition for relief with the Commissioner of Veterans' Affairs seeking to compel Respondent to provide a statement of reasons.

On July 14, 1998, several days prior to the scheduled hearing date in this matter, Respondent provided Petitioner with a statement of the reasons why he was not selected for the position. Petitioner concedes that the statement of reasons meets the requirements of the Veterans Preference Act. Petitioner argues, however, that Respondent's failure to timely produce the statement of reasons adversely affected his ability to learn from the interview and to improve his performance in subsequent interviews. Petitioner contends that he should be awarded nominal damages for Respondent's statutory violation. Specifically, Petitioner seeks \$615.94 for the costs he incurred in traveling to Minneapolis for the two interviews and the wages he lost for the time he took off from work.

Respondent maintains that the expenses Petitioner incurred in interviewing for the position are unrelated to any damage caused by the Respondent's failure to promptly provide the statement of reasons. Respondent points out that Petitioner incurred all of his claimed expenses before any hiring decision was made. Respondent argues that it is inappropriate to award Petitioner his interview expenses as Petitioner would have incurred these costs regardless of Respondent's timeliness in providing the required statement of reasons.

The enforcement provision of the Veterans Preference Act, Minn. Stat. § 197.481, subd.1, provides in relevant part that a veteran who has been denied rights under section 43A.11 may petition the Commissioner for an order directing the agency to "grant the veteran such relief the Commissioner finds justified by said statutes." Minn. Stat. § 43A.11, subd. 9, requires that if a certified eligible veteran is rejected for an employment position, that the appointing authority notify the veteran in writing of the reasons for the rejection. While the Act does not provide a specific time period during which the statement of reasons for rejection must be provided to an eligible veteran, the Judge concludes that Respondent's seven-month delay in providing Petitioner with a statement of reasons was a per se violation of the statute. Nevertheless, Respondent's statutory violation resulted in little if any loss for the Petitioner. Money damages are ordinarily awarded as compensation for loss or injury. There are, however, certain instances where the law allows for damages although no loss is shown. *Perl v. St. Paul Fire and Marine Ins. Co.*, 345 N.W.2d 209, 212 (Minn. 1984), *citing* C. McCormick, *McCormick on Damages*, at 86 (1935). Nominal damages, for example, are given not as an equivalent for the wrong, but in recognition of a technical injury and by way of declaring a right or as a basis for taxing costs. 25 C.J.S. Damages § 8. *See, Johnson*

v. City of Battle Lake, OAH Docket No. 8-3100-9549-2 (May 25, 1995); *Brun v. Crow Wing County*, OAH Docket No. 69-3100-5788-2 (Sept. 25, 1991).

Based upon a complete review of all the filings in this case, the Judge concludes that the Petitioner should be awarded nominal damages for Respondent's violation of Minn. Stat. § 43A.11, subd. 9. Had Respondent simply complied with the Veterans Preference Act and given Petitioner a statement of reasons after the hiring decision was made, this proceeding would not have been necessary. The Judge agrees with Respondent, however, that an award of Petitioner's interview expenses is not appropriate. Petitioner willingly incurred these expenses before Respondent made its hiring decision. In addition, as this matter did not proceed to hearing, Petitioner incurred no expenses either in retaining counsel or in traveling to Minnesota. Yet, Petitioner did expend a significant amount of time and effort over the course of seven months to obtain that which by law Respondent was required to provide. In recognition of this, the Judge concludes that Respondent should be ordered to pay Petitioner nominal damages in an amount of \$200.

G.A.B.